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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.             | CONFIRMATION NO.       |
|---|-------------|----------------------|---------------------------------|------------------------|
| 10/718,378  | 11/19/2003  | Basil W. Savage      |                                 | 9537                   |
| 24919   | 7590        | 06/06/2007           |                                 |                        |
| MCAFFEE & TAFT<br>TENTH FLOOR, TWO LEADERSHIP SQUARE<br>211 NORTH ROBINSON<br>OKLAHOMA CITY, OK 73102 |             |                      | EXAMINER<br>ALEXANDER, REGINALD |                        |
|   |             |                      | ART UNIT<br>1761                | PAPER NUMBER           |
|   |             |                      | MAIL DATE<br>06/06/2007         | DELIVERY MODE<br>PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/718,378

Applicant(s)

SAVAGE ET AL.

Examiner

Reginald L. Alexander

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-29, 31 and 37-42 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-6, 9-15, 17-20, 30 and 32-35 is/are rejected.
- 7) ☒ Claim(s) 3, 7, 8, 16, 21, 22 and 36 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 11/03.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 32 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no antecedent basis for the "ribs" recited in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 6, 9-15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Quantz '275.

There is disclosed in Quantz a nut-cracking apparatus, comprising: an endless conveyor 110, 111, 120 for delivering nuts to a pickup point, wherein the conveyor is mounted to a plurality of sprockets 40, 41, 112, 114; a turret rotatably mounted to a frame 12, the turret including a plurality of nut-cracking units 32; wherein the endless conveyor rotates about rear conveyor sprockets 112, 114 and forward conveyor sprockets 40, 41 and the center of rotation of the forward sprockets is within a periphery defined by the nut-cracking units; a shell containment area 122, including a pair of ribs

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(hopper side walls) positioned radially outwardly from a periphery of the turret; and wherein the turret comprises a crack die and shuttle assembly 72, 84 and a cylinder assembly 48.

Claims 30 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Quantz '617.

There is disclosed in Quantz a nut-cracking apparatus, comprising: an endless conveyor 86 movable on a plurality of sprockets, the endless conveyor comprising a plurality of nut pockets 95 mounted to an endless chain; a turret 22 rotatably mounted on a frame, the turret including a plurality of nut-cracking units, each unit comprising: a crack die 34 mounted at the end of a crack die cylinder 42, the crack die cylinder having a shuttle 50 slidably disposed therein; and a nut-clamping rod 32 connected to a piston 36 located in a nut-clamping cylinder 35, the nut-clamping cylinder defining a first opening 38; a second opening 39, and a rotating valve plate 25 having a plurality of openings; and a door 78 pivotably attached to the frame and movable between open and closed positions, the apparatus having a shell containment chamber (col. 4, lines 47-60).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quantz '275 in view of Quantz '890.

The Quantz '890 reference discloses the use of an orienting plate positioned over a portion of an endless conveyor.

It would have been obvious to one skilled in the art to provide the apparatus of Quantz '275 with the orienting plate taught in Quantz '890, in order to ensure that the nuts on the conveyor are positioned correctly.

In regards to the pickup point being located between the first and second ends of the orienting plate, such is a matter of design choice. The extension length of the plate can be determined by designer preference.

Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quantz '275 in view of Quantz '617.

The Quantz '617 reference, as discussed above, discloses the claimed limitations of the nut-cracking unit.

It would have been obvious to one skilled in the art to substitute the nut-cracking unit of Quantz '275 with that disclosed in Quantz '617, in order to provide a more efficient means of cracking the nuts.

Claims 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quantz '617 in view of Quantz '275.

The Quantz '275 reference, as discussed above, teaches locating a pickup point above the axis of rotation of the turret.

It would have been obvious to one skilled in the art to modify the Quantz '617 reference with that taught in Quantz '275 and locate the pickup point above the turret axis, for the purpose of providing an alternative means for locating and cracking the nuts.

***Allowable Subject Matter***

Claims 23-29, 31 and 37-42 are allowed.

Claims 3, 7, 8, 16, 21, 22 and 36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Lindsey and Walling are cited for their disclosure of the state of the art.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

rla  
01 June 2007

  
Reginald L. Alexander  
Primary Examiner  
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